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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/822,154	03/30/2001	Robert A. Immerman	IN0191US (#90067)	6306
28672	7590	08/11/2004	EXAMINER	
D. PETER HOCHBERG CO. L.P.A. 1940 EAST 6TH STREET CLEVELAND, OH 44114			WOOD, KIMBERLY T	
			ART UNIT	PAPER NUMBER

3632

DATE MAILED: 08/11/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/822,154

Applicant(s)

IMMERMAN, ROBERT A.

Examiner

Kimberly T. Wood

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 19 May 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-5, 11-15 and 22-26 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 23, 24 and 26 is/are allowed.
- 6) ☒ Claim(s) 1-5, 11-16, 22 and 25 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

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This is an office action for serial number 09/822,154,
Suction Cup Holder.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is

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determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

Claim 22 is rejected under 35 U.S.C. 102(e) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Rodack d442,002. The examiner has viewed the claims as being a subcombination the suction cup being only functionally recited and not positively claimed. Rodack (see attached figure) discloses a fixture with vertical wires, and at least one device comprising a generally rectangular structure, having vertical sides, horizontal sides, and four rounded corners, at least two fastener arrangements.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-5, and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Finger 5,588,543 in view of Thalenfeld 5,887,731. Finger discloses a first pair of

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rigid horizontal wires (Figure 7, see attached drawing), a second pair of rigid transverse to the first pair of horizontal wires, two fastener arrangements, a device, and a fixture (117), a suction cup (figure 5, element 32, column 3, lines 42ff) having a head and a neck. Finger discloses all of the limitations of the claimed invention except for the second pair of wires being co-planar to the first pair. Thanlenfeld teaches that it is known to have a rectangular opening having co-planar first and second pairs of wires (figure 1, elements 14 and 16). It would have been obvious to one having ordinary skill in the art to have modified Finger to have the wires being co-planar as taught by Thalenfeld for the purpose of aesthetics and for preventing the wires from being accidentally disengaged or bent. Finger in view of Thalenfeld discloses the claimed invention except for the welding, brazing, or adhesive as the fastener arrangement. The applicant has claimed considered to be one of "using" novel material, patentability of process is linked to patentability of material used, but if process claimed is directed to "method of making" novel material, patentability of process is determined based on inventiveness of process steps themselves, and selection of novel starting material is not

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dispositive of patentability. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have made the fastener arrangements being a weld, at least one brazing or adhesive, since it has been held to be within the general skill of a worker in the art to select a known process to fasten together known materials on the basis of its suitability for the intended use as a matter of obvious design choice. The further limitation of the device being fastened to the fixture by soldering or by adhesive is a design choice and the applicant did not disclose any reason for why the device and the fixture critically had to be fastened with one of those techniques. Therefore, it would have been obvious to one having ordinary skill in the art to have chosen to use the well-known techniques such as soldering or by using adhesive in order to securely fix the device to the fixture.

Claims 11-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Finger in view of Thalenfeld as discussed above in further view of Raphael 3,181,702. Finger in view of Thanlenfeld disclose all of the limitations of the claimed invention except for the suction cup having an engagement member. Raphael discloses a first

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pair of horizontal wires (39 and 41), a second pair transverse wires (96), the wires defining a generally vertical rectangular opening (see attached figure), a suction cup with a head and a neck), two fastener arrangements (where the wires are attached to the fixture), and a fixture (50, 42, 43, 51, 52, 47, 48 and 53). The horizontal wire (41) retains the neck of the suction cup (66) within the opening. The wires are attached to the fixture by welds or at least one brazing (column 2, lines 56ff, where 52 and 53 are attached to 39 and where 47 and 48 are attached to 41). It would have been obvious to one having ordinary skill in the art to have modified Finger in view of Thalenfeld to have used the suction cup as taught by Raphael because these two suction cups are art-recognized equivalents at the time the invention was made, one of ordinary skill in the art would have found it obvious to substitute the suction cups.

Response to Arguments

Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection.

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Allowable Subject Matter

Claims 23, 24, and 26 are allowed.

The following is an examiner's statement of reasons for allowance: the prior art does not disclose a wire fixture made of metal wires having a horizontal shelf surrounded by vertical walls; a resilient suction cup having a suction cup body, a neck, and an enlarged head; and a piece of metal wire bent in the form of a rectangle with rounded corners.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date

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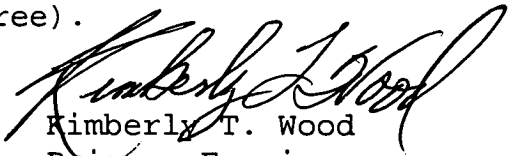
of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kimberly T. Wood whose telephone number is 703-308-0538. The examiner can normally be reached on Monday-Thursday 7:30am to 5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Leslie Braun can be reached on 703-308-2156. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Kimberly T. Wood
Primary Examiner
Art Unit 3632

August 9, 2004

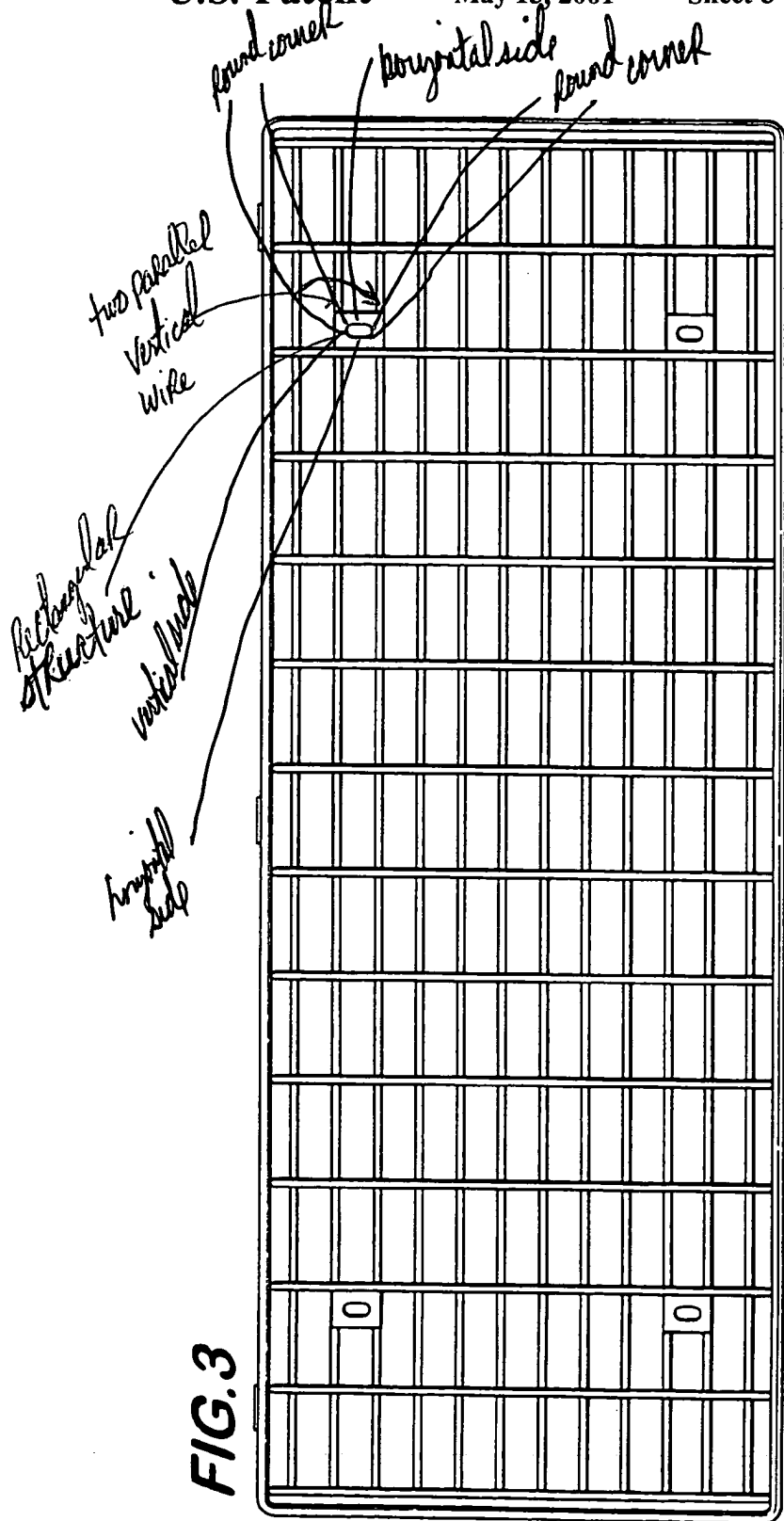


FIG. 3

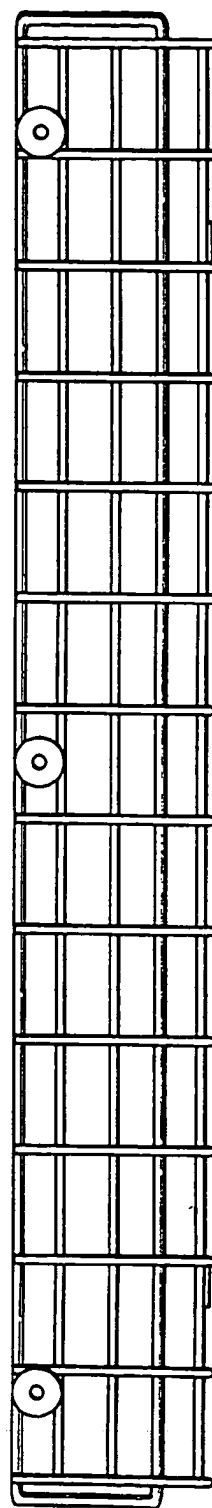


FIG. 5

May 4, 1965

J. RAPHAEL

3,181,702

HANGER FOR USE IN COMBINATION WITH SHOWERS AND THE LIKE

Filed March 25, 1963

3 Sheets-Sheet 1

